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Merrill Lynch Capital Trust III and  
Merrill Lynch, Pierce, Fenner &  
Smith Incorporated

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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IN RE MERRILL LYNCH & CO., INC. : Master File No.:  
SECURITIES, DERIVATIVE AND ERISA : 07cv9633(LBS)(AJP)(DFE)  
LITIGATION :  
----- X  
This Document Relates to: :  
Securities Action, 07cv9633(LBS)(AJP)(DFE) :  
Derivative Action, 07cv9696(LBS)(AJP)(DFE) :  
ERISA Action, 07cv10268(LBS)(AJP)(DFE) :  
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**DECLARATION OF JAY B. KASNER  
IN SUPPORT OF THE MERRILL DEFENDANTS'  
MOTIONS TO DISMISS THE CONSOLIDATED AMENDED COMPLAINTS**

JAY B. KASNER, under penalty of perjury, declares as follows:

1. I am a member of the Bar of this Court and of the firm Skadden, Arps, Slate, Meagher & Flom LLP, attorneys for Defendants Merrill Lynch & Co., Inc., Merrill Lynch Capital Trust I, Merrill Lynch Capital Trust II, Merrill Lynch Capital Trust III and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Defendants").

2. I submit this declaration in support of: (A) the Motions to Dismiss the Consolidated Amended Class Action Complaint in the Securities Action, 07cv9633(LBS)(AJP)(DFE) made by the Merrill Defendants, and defendants O'Neal, Fleming, Edwards and Fakahany; (B) all defendants' Motions to Dismiss the Consolidated Amended Shareholders' Derivative Complaint in the Derivative Action, 07cv9696(LBS)(AJP)(DFE); and (C) all defendants' Motion to Dismiss the Consolidated Amended Complaint for Violations of ERISA in the ERISA Action, 07cv10268(LBS)(AJP)(DFE) (collectively, the "Motions"); and to transmit to the Court true and correct copies of the following documents that this Court may consider in connection with its determination of the Motions:

- |                  |                                                                                                                                                                                             |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Exhibit A</u> | Excerpts from William W. Bartlett, <u>Mortgage-Backed Securities: Products, Analysis, Trading</u> (1989), 396-98.                                                                           |
| <u>Exhibit B</u> | <u>CSI: Credit Crunch</u> , Economist, Oct. 18, 2007.                                                                                                                                       |
| <u>Exhibit C</u> | Randall Dodd, <u>Subprime: Tentacles of a Crisis</u> , Fin. & Development, (IMF quarterly magazine) Dec. 2007.                                                                              |
| <u>Exhibit D</u> | Excerpts from Frank J. Fabozzi, <u>Credit Enhancements for Nonagency MBS Products</u> , in <u>The Handbook of Mortgage-Backed Securities</u> (Frank J. Fabozzi, ed., 6th ed. 2006), 113-22. |
| <u>Exhibit E</u> | Statement of John Finnegan before the House Committee on Oversight and Government Reform, Mar. 7, 2008.                                                                                     |
| <u>Exhibit F</u> | Excerpts from Laurie S. Goodman et al., <u>Subprime Mortgage Credit Derivatives</u> (Frank J. Fabozzi, ed., 2008), 10, 145-49, 156-60, 269-70.                                              |
| <u>Exhibit G</u> | Alan Greenspan, <u>The Roots of the Mortgage Crisis</u> , Wall St. J., Dec. 12, 2007.                                                                                                       |
| <u>Exhibit H</u> | Alan Greenspan, <u>We Will Never Have a Perfect Model of Risk</u> , Fin. Times (London), Mar. 16, 2008.                                                                                     |

<u>Exhibit I</u>	Jian Hu, Moody's Investors Servs., <u>Structured Finance CDO Ratings Surveillance Brief: September 2007</u> , (Oct. 23, 2007).
<u>Exhibit J</u>	Ben Logan, <u>The ABX Indices: A Pricing Conundrum</u> , Credit, May 1, 2008.
<u>Exhibit K</u>	Yalman Onaran and Jody Shenn, <u>Bear Stearns Turns to Marano for \$1.6 Billion Bailout</u> , Bloomberg, June 27, 2007.
<u>Exhibit L</u>	Susan Pulliam, <u>Deals with Hedge Funds May be Helping Merrill Delay Mortgage Losses</u> , Wall St. J., Nov. 2, 2007 (as corrected on Nov. 26, 2007).
<u>Exhibit M</u>	Susan Pulliam et al, <u>Merrill Upped Ante as Boom in Mortgage Bonds Fizzled</u> , Wall St. J., Apr. 16, 2008.
<u>Exhibit N</u>	Allison Pyburn, <u>ML Leads Banner CDO Year</u> , Asset Securitization Report, Jan. 8, 2007.
<u>Exhibit O</u>	Olivia Thetgyi, <u>AIG Steps Back from ABS CDO Super Seniors</u> , Securitization News, Apr. 3, 2006.
<u>Exhibit P</u>	Merrill Lynch Stock Trading Data, September 1, 2006 through March 31, 2008.
<u>Exhibit Q</u>	Bear Stearns Stock Trading Data, September 1, 2006 through March 31, 2008.
<u>Exhibit R</u>	Citigroup Stock Trading Data, September 1, 2006 through March 31, 2008.
<u>Exhibit S</u>	Lehman Brothers Stock Trading Data, September 1, 2006 through March 31, 2008.
<u>Exhibit T</u>	Morgan Stanley Stock Trading Data, September 1, 2006 through March 31, 2008.
<u>Exhibit U</u>	UBS Stock Trading Data, September 1, 2006 through March 31, 2008.
<u>Exhibit V</u>	Excerpts from Merrill Lynch Annual Report on Form 10-K for the year ending December 29, 2006, filed with the United States Securities and Exchange Commission (the "SEC") on February 26, 2007.

<u>Exhibit W</u>	Excerpts from Merrill Lynch Annual Report on Form 10-K for the year ending December 28, 2007, filed with the SEC on February 25, 2008.
<u>Exhibit X</u>	Excerpts from Merrill Lynch Quarterly Report on Form 10-Q for the quarter ending March 30, 2007, filed with the SEC on May 7, 2007.
<u>Exhibit Y</u>	Excerpts from Merrill Lynch Quarterly Report on Form 10-Q for the quarter ending June 29, 2007, filed with the SEC on August 3, 2007.
<u>Exhibit Z</u>	Excerpts from Merrill Lynch Quarterly Report on Form 10-Q for the quarter ending September 28, 2007, filed with the SEC on November 7, 2007.
<u>Exhibit AA</u>	Excerpts from Merrill Lynch Quarterly Report of Form 10-Q for the quarter ending March 28, 2008, filed with the SEC on May 6, 2008.
<u>Exhibit BB</u>	Merrill Lynch Current Report, dated and filed with the SEC on Form 8-K on September 17, 2004.
<u>Exhibit CC</u>	Merrill Lynch Press Release dated October 5, 2007, filed with the SEC on Form 8-K on October 5, 2007.
<u>Exhibit DD</u>	Excerpts from Merrill Lynch Press Release dated October 24, 2007, filed with the SEC on Form 8-K on October 24, 2007.
<u>Exhibit EE</u>	Excerpts from Merrill Lynch Current Report, dated and filed with the SEC on Form 8-K on October 30, 2007.
<u>Exhibit FF</u>	Excerpts from transcript of Merrill Lynch Earnings Conference Call for the quarter ending June 29, 2007, held on July 17, 2007.
<u>Exhibit GG</u>	Excerpts from Merrill Lynch Definitive Proxy Statement for 1987, filed with the SEC on Form 14A on March 23, 1987.
<u>Exhibit HH</u>	Excerpts from Merrill Lynch Definitive Proxy Statement for 2005, filed with the SEC on Form 14A on March 15, 2005.
<u>Exhibit II</u>	Excerpts from Merrill Lynch Definitive Proxy Statement for 2006, filed with the SEC on Form 14A on March 10, 2006.
<u>Exhibit JJ</u>	Excerpts from Merrill Lynch Definitive Proxy Statement for 2007, filed with the SEC on Form 14A on March 16, 2007.

<u>Exhibit KK</u>	Excerpts from Merrill Lynch Definitive Proxy Statement for 2008, filed with the SEC on Form 14A on March 14, 2008.
<u>Exhibit LL</u>	E. Stanley O'Neal, Letter to Fellow Shareholders and Clients, Merrill Lynch 2006 Annual Report, February 27, 2007.
<u>Exhibit MM</u>	Excerpts from Merrill Lynch Registration Statement, filed with the SEC on Form S-4 on May 7, 2007.
<u>Exhibit NN</u>	Merrill Press Release, <u>Merrill Lynch Announces Agreement to Acquire First Franklin from National City Corporation</u> , issued on September 5, 2006.
<u>Exhibit OO</u>	Jeffrey N. Edwards Statements of Changes in Beneficial Ownership, filed with the SEC on Form 4 on January 24, 2007 and February 2, 2007.
<u>Exhibit PP</u>	Ahmass L. Fakahany Statements of Changes in Beneficial Ownership, both filed with the SEC on Form 4 on February 6, 2007.
<u>Exhibit QQ</u>	Gregory J. Fleming Statements of Changes in Beneficial Ownership, filed with the SEC on Form 4 on January 26, February 2, February 8, May 18 and October 24 of 2005; January 25, February 23 and August 8 of 2006; and January 24, February 2, February 8 and September 25 of 2007.
<u>Exhibit RR</u>	E. Stanley O'Neal Statements of Changes in Beneficial Ownership, filed with the SEC on Form 4 on March 1, 2005, February 24, 2006 and February 6, 2007.
<u>Exhibit SS</u>	Excerpts from Merrill Lynch Restated Certificate of Incorporation dated May 3, 2001.
<u>Exhibit TT</u>	Merrill Press Release, <u>Merrill Reports Record Net Revenues, Net Earnings and Diluted EPS for Full Year 2006</u> , issued on January 18, 2007.
<u>Exhibit UU</u>	Merrill Press Release, <u>Merrill Lynch Names Ahmass Fakahany and Greg Fleming Co-Presidents</u> , issued on May 16, 2007.
<u>Exhibit VV</u>	Susan Roth Katzke & Ross Seiden, <u>Merrill Lynch</u> , Credit Suisse Equity Research (Feb. 2, 2007).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 18, 2008.



JAY B. KASNER